

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 01-00078 DAE
)	
Plaintiff,)	
)	
vs.)	
)	
GARY WAYNE RODRIGUES, (01))	
ROBIN HAUNANI RODRIGUES)	
SABATINI, (02))	
)	
Defendants.)	
_____)	

ORDER AFFIRMING SENTENCES

Following a jury trial, Defendant Rodrigues was sentenced on September 30, 2003, to a term of imprisonment of 60 months as to Counts 1-55, 64 months as to Counts 56-100, and 36 months as to Count 102, all terms to run concurrently. Defendant Rodrigues was also sentenced to a term of supervised release of three years as to Counts 1-200, and one year as to Count 102, all terms to run concurrently. On September 30, 2003, Defendant Rodrigues filed a notice of appeal.

Following a jury trial, Defendant Sabatini was sentenced on December 9, 2003, to a term of imprisonment of 46 months as to each of Counts 1-50 and 56-100, all terms to run concurrently, and supervised release of three years

as to each of Counts 1-50 and 56-100, all terms to run concurrently. On December 16, 2003, Defendant Sabatini filed a notice of appeal.

On June 11, 2007, the Ninth Circuit affirmed the jury's verdict and ordered a limited remand pursuant to United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005) with respect to both Defendants.¹ The Ninth Circuit did not vacate Defendants' sentences and remand for a full resentencing. Instead, the Ninth Circuit specifically ordered "a limited remand for the sentencing judge to determine whether the [sic] he would have imposed the same sentences if he had known the guidelines were advisory." United States v. Rodrigues, Nos. 03-10549, 04-10027, 2007 WL 1675012, at *4 (9th Cir. June 11, 2007.)

The Ameline case provides "[i]f the district court judge determines that the sentence imposed would not have differed materially had he been aware that the Guidelines were advisory, the district court judge should place on the record a decision not to resentence, with an appropriate explanation." 409 F.3d at 1084.

¹The Ninth Circuit denied Defendants' petition for rehearing and petition for rehearing en banc on August 21, 2007. On September 24, 2007, the Ninth Circuit denied Defendants' motion for a stay of mandate. The mandate was issued on September 27, 2007.

After carefully reviewing the record in this case, including the presentence report, sentencing statements, and downward departure motion, this Court finds that had it known that the guidelines were advisory, rather than mandatory, at the time of the sentencings, it would have imposed the same sentences. The Court felt at the time of the original sentencings that the sentences were clearly justified and reasonable in light of all the 18 U.S.C. § 3553 factors and the Court continues to feel so today. For the reasons stated above, the Court **AFFIRMS** Defendants' sentences in all respects.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, September 28, 2007.





David Alan Ezra
United States District Judge

United States of America vs. Gary Wayne Rodrigues, et al., Cr. No. 01-00078
DAE; ORDER AFFIRMING SENTENCES